

**CONSOLIDATED CONSENT DECREE BETWEEN UNITED STATES OF AMERICA,  
STATE OF IOWA, NORTHEAST IOWA CITIZENS FOR CLEAN WATER  
AND CITY OF POSTVILLE, IOWA**

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WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and on behalf of the U.S. Department of the Interior, U.S. Fish and Wildlife Service and the National Park Service, has filed a Complaint in this action concurrently with this Consent Decree alleging that Defendant, City of Postville, Iowa, has violated Sections 301, 307 and 402 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311, 1317 and 1342, and is liable for damages for injury to, destruction of, or loss of Natural Resources.

Postville is a municipal corporation organized and existing under the laws of the State of Iowa. Postville owns and operates an industrial lagoon wastewater treatment plant, which is a publicly owned treatment works (hereafter "POTW" or "Facility"), located within Section 33, Township 96N, Range 6W, Allamakee County, Postville, Iowa. The Complaint alleges that Defendant has operated its POTW in violation of the requirements of Sections 301, 307 and 402 of the Act, 33 U.S.C. §§ 1311, 1317 and 1342. These alleged violations include Defendant's failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit for the POTW, issued under Section 402 of the Act, 33 U.S.C. § 1342, and Defendant's failure to require the two Industrial Users ("IUs") that discharge wastewater to the POTW to comply with pretreatment standards, limitations and conditions, pursuant to Section 307 of the Act, 33 U.S.C. § 1317. The POTW

discharges wastewater to an unnamed stream (sometimes called Hecker Creek), then to the Yellow River, both of which are waters of the United States.

In its Complaint, the United States, on behalf of the U.S. Department of the Interior, U.S. Fish and Wildlife Service and the National Park Service, alleges that, on or about March 17, 2000, Defendant caused a discharge in violation of its NPDES Permit and the Clean Water Act that contributed to an aquatic life kill in the Yellow River ("March 2000 Discharge Event"). In addition to the Complaint violations described in the preceding paragraph, the United States alleges that, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607; Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f); and the Park System Resource Protection Act ("PSRPA"), 16 U.S.C. § 19jj, the Defendant is liable for damages for injury to, destruction of, or loss of Natural Resources belonging to, managed by, held in trust by, controlled by or appertaining to the United States as trustee for those resources, including the cost of assessing such injury, resulting from the release of hazardous substances from the Defendant as result of the March 2000 Discharge Event.

Pursuant to Executive Order 12580, and the National Contingency Plan, 40 C.F.R. Part 300, the President of the United States has delegated to the Department of the Interior, on behalf of the United States Fish and Wildlife Service and National Park Service, authority to act as trustee for natural resources that may have been, or in the

future may be, injured by the release of hazardous substances at or from the City of Postville.

The State of Iowa ("State") has been joined as a Plaintiff in this action pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). Plaintiff, the State of Iowa, has joined the United States in the aforementioned Complaint alleging that Defendant, City of Postville, Iowa, has violated Iowa Code § 455B.186(1), 567 I.A.C. 64.3(1), and the NPDES Permit, and is liable for Natural Resource Damages resulting from the March 2000 Discharge Event pursuant to Iowa Code § 481A.151(1).

The Northeast Iowa Citizens for Clean Water ("NICCW") has filed a separate Complaint pursuant to Section 505(a) of the Act, 33 U.S.C. § 1365(a), alleging violations similar to those alleged by the United States pursuant to the Clean Water Act. These two actions have been joined for purposes of settlement and execution of this Consolidated Consent Decree ("Consent Decree").

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, is fair, reasonable, and in the public interest, and will expedite restoration, replacement, or acquisition of the equivalent of the Natural Resources that the United States asserts have been injured, destroyed or lost.

NOW, THEREFORE, with the consent of the Parties, and without any admission of fact or law, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and 1365(a), and over the Parties. Venue lies in the Northern District of Iowa pursuant to 309(b) and 505(c) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and 1365(c), and 28 U.S.C. §§ 1391(b) and 1395(a), because Defendant resides and is located in this judicial district and the violations alleged in the Complaints are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaints state claims upon which relief may be granted pursuant to Sections 301, 307 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317 and 1342, and Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f); and PSRPA, 16 U.S.C. § 19jj.

3. Notice of the commencement of this action has been given to the State pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

## II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, the State and NICCW, and upon Defendant and any successor or other entities or persons otherwise bound by law.

5. Any transfer of ownership or operation of the Facility to any other person, prior to termination or revocation of Defendant's EPA NPDES Permit Number IA0037036 and Termination of this Consent Decree pursuant to Section XX, must be conditioned upon the transferee's agreement to undertake the obligations required by this Consent Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States and the State as third-party beneficiary of such agreement. At least thirty days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region VII, the United States Attorney for the Northern District of Iowa, the United States Department of Justice, and the State of Iowa, in accordance with Section XVI of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree. No transfer of ownership or operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented.



6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, successors, assigns, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Clean Water Act or CERCLA, or in regulations promulgated pursuant to the Clean Water Act or CERCLA, shall have the meanings assigned to them in the statutes or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Consent Decree" or "Decree" shall mean this Decree;
- b. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- c. "Defendant" shall mean the City of Postville, Iowa;

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

e. "Facility" shall mean Defendant's industrial lagoon wastewater treatment plant located in Postville, Iowa. This facility is a publicly owned treatment plant ("POTW");

f. "IDNR" shall mean the Iowa Department of Natural Resources, which is the agency authorized to administer the NPDES program in Iowa under the provisions of Section 402(b) of the Act, 33 U.S.C. § 1342(b);

g. "IU" or "IUs" shall mean Industrial User or Industrial Users, respectively, which for purposes of this Consent Decree shall refer to Iowa Turkey Products, Inc., including successor, Turkey Valley Farms, and/or AgriProcessors, Inc.;

h. "Natural Resource" or "Natural Resources" shall mean land, resident and anadromous fish, resident and migratory wildlife, biota, air, water, ground water, sediments, wetlands, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State.

i. "Natural Resource Damages" shall mean any damages recoverable by the United States or the State on behalf of the public, for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release;

(ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state law.

j. "NICCW" shall mean the Northeast Iowa Citizens for Clean Water, Plaintiff-Interveners and all of its members, officers, directors, agents or representatives;

k. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the Act, 33 U.S.C. § 1342;

l. "NRDAR Fund" shall mean the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund;

m. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral;

n. "Parties" shall mean the United States, the State of Iowa, NICCW, and Defendant;

o. "POTW" shall mean a publicly owned treatment plant as defined at 40 C.F.R. § 403.3. For purposes of this Consent Decree, Defendant's POTW is the industrial lagoon wastewater treatment plant;

p. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

q. "Site." The location of the Site begins at the City's outfall structure along the unnamed stream (sometimes called Hecker Creek) to the confluence of the Yellow River to Effigy Mounds National Park;

r. "State" shall mean the State of Iowa;

s. "United States" shall mean the United States of America, acting on behalf of EPA and the Department of the Interior.

#### IV. CIVIL PENALTY

9. Within thirty days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$40,000 as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Iowa following lodging of the Consent Decree. Any payments received by the United States after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation, which should reference DOJ case number 90-5-1-1-08078, to the United States and EPA in accordance with Section XVI of this Consent Decree (Notices).

10. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

11. No later than thirty days after the Effective Date of this Consent Decree, Defendant shall pay a civil penalty of \$10,000 to the State of Iowa. Payment of the civil penalty and any accrued interest, made payable to the "State of Iowa," shall be delivered to:

David R. Sheridan  
Assistant Attorney General  
Environmental Law Division  
Iowa Department of Justice  
Lucas State Office Bldg.  
321 E. 12<sup>th</sup> Street, Room 018  
Des Moines, Iowa 50319

12. If Defendant fails to pay the civil penalties required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, interest shall accrue on any amounts overdue to the U.S. under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. §1961. Interest shall accrue on any amounts overdue to the State under the terms of this Consent Decree pursuant to Iowa Code § 535.3(1). Interest is to be paid from the date said payment is due until all amounts owed are paid. Late payment of the civil penalty shall be made in accordance with Section IV, Paragraphs 9 and 11, above. Stipulated Penalties shall be paid in accordance with Section IX, Paragraph 32, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraphs 9 and 11, above.

#### V. COSTS AND ATTORNEYS FEES FOR NICCW

13. No later than thirty days after the Effective Date of this Consent Decree, Defendant shall pay an amount of \$10,000 to the NICCW for costs and attorneys fees. Payment shall be made by certified check made payable to Sullivan and Ward, P.C., and mailed to Larry McLellan, Sullivan and Ward, P.C., 801 Grand Avenue, Des Moines, Iowa 50309.

#### VI. COMPLIANCE REQUIREMENTS

14. Defendant shall comply with Sections 301, 307 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317 and 1342, and with regulations promulgated thereunder at 40 C.F.R. Parts 122, 123 and 403, and with the terms, conditions and requirements of applicable NPDES permits and Administrative Orders from Iowa with respect to the Facility, including, but not limited to EPA NPDES Permit Number IA0037036 (Iowa NPDES Permit Number 0375002), as amended, and the in-stream monitoring requirements of the Iowa Department of Natural Resources Administrative Order No. 2000-WW-38, issued November 8, 2000, as set forth in Attachment 1 to this Decree.

15. Defendant shall be responsible for enforcing the terms of the Treatment Agreements for IUs AgriProcessors, Inc., and Iowa Turkey Products, Inc., appended to EPA NPDES Permit Number IA0037036, as amended. Defendant may coordinate with EPA and/or the State to ensure compliance by the IUs with the terms of the Treatment Agreements.

16. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### VII. MONITORING AND RECORD KEEPING REQUIREMENTS

17. Defendant shall conduct the following monitoring of wastewater activities associated with the Facility:

a. IU Effluent / Facility Influent Monitoring. Defendant shall measure daily influent wastewater flow to the Facility by measuring the effluent from each IU at a point before it is mixed with effluent from the other IU. Defendant shall maintain a separate monthly log of the daily effluent flow measurements for each IU and, in addition, a monthly log of the total daily influent flow to the Facility. Defendant shall include in its monthly log of the Facility's daily influent flows information identifying the cell or cells of the Facility to which the influent is directed.

b. Pre-discharge Monitoring. Defendant shall perform pre-discharge monitoring as required by EPA NPDES Permit No. IA0037036, and maintain complete

and accurate records of each sample taken, including, but not limited to, information regarding the date, time and location of the sample, the method of sample preservation, if any, and complete chain of custody information.

c. Discharge Monitoring. In addition to any monitoring that is required under EPA NPDES Permit No. IA0037036, Defendant shall maintain records of each discharge from the Facility that include, but are not limited to, the following information:

- i. date and time discharge commenced;
- ii. date and time discharge ceased;
- iii. identity of each cell that contributed to the discharge, and if other than the final cell, the date or dates during which each such other cell contributed to the discharge;
- iv. the total flow for each day during which the discharge occurred;
- v. the total flow for the discharge period;
- vi. the location of and method and/or device used for determining flow measurements;
- vii. the beginning and ending elevations for each cell of the Facility during the period of discharge; and
- viii. the date, time and location of each sample taken, the method of sample preservation, if any, and complete chain of custody information.



d. In-stream Monitoring. Defendant shall comply with the requirements of Iowa Administrative Order No. 2000-WW-38, and monitoring program requirements identified therein, as set forth in Attachment 1 to this Decree, to perform in-stream monitoring in the Yellow River during all periods of discharge from the Facility under EPA NPDES Permit No. IA0037036. In addition, immediately prior to, and no less frequently than, every seven days thereafter following commencement of each discharge from the Facility, Defendant shall observe the level and characteristics of the water at no less than three locations in the unnamed creek to which the Facility discharges and at the first access point to which Defendant has legal access in the Yellow River immediately downstream of the confluence of the unnamed creek and the Yellow River. One of the observation points should be as near as possible to the beginning of the losing portion of the unnamed creek. Defendant shall record, at a minimum, the following characteristics: date; time; location (may submit latitude/longitude information data, geographic information service (GIS) data, or a map with the location of observation points); water level; color; clarity of water; presence and description of any floatables.

#### VIII. REPORTING REQUIREMENTS

18. Beginning thirty days after the date of lodging this Consent Decree, until termination of the Consent Decree pursuant to Section XX, Defendant shall provide information and submit reports to the United States and the State contacts identified in Paragraph 66 of this Consent Decree, as follows:

a. Monthly Influent Reporting. Within ten days following the end of each month, Defendant shall submit by facsimile or electronic mail to the United States and the State a copy of all records for the month just ended of IU effluent flow measurements and Facility influent flow measurements, as required by Paragraph 17, Subparagraph a of this Consent Decree.

b. Pre-discharge Reporting. Defendant shall notify the United States and the State by facsimile or e-mail within one business day of taking each set of pre-discharge monitoring samples pursuant to Paragraph 17, Subparagraph b of this Consent Decree. Defendant shall thereafter notify EPA and the State by facsimile or e-mail within one business day of receiving the complete analytical results from the pre-discharge monitoring as to whether and when Defendant intends to commence the discharge.

c. Discharge Reporting. Within twenty days following the end of a discharge from the Facility under EPA NPDES Permit No. IA0037036, Defendant shall submit to the United States and the State a report that includes all information required under Paragraph 17, Subparagraphs b, c and d. In addition, Defendant shall include within the report a copy of all laboratory reports showing the values of all pre-discharge and discharge monitoring required pursuant to EPA NPDES Permit No. IA0037036 and Iowa Administrative Order No. 2000-WW-38.

d. Reporting Pursuant to NPDES Permit and Iowa Administrative Order. Defendant shall submit a copy of all reports required under EPA NPDES Permit

No. IA0037036 and Iowa Administrative Order No. 2000-WW-38 to the United States at the same time each such report is submitted to the State.

19. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree or of any applicable permit, Defendant shall notify the United States and the State of such violation and its likely duration in writing within ten business days of the day Defendant first becomes aware of the violation or the potential violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall include a statement to that effect in the report. Defendant shall diligently investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the requisite notice for purposes of Section X (Force Majeure).

20. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify the United States and the State orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

21. All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

22. Each report submitted by Defendant under this Section shall be signed by an authorized official, as defined at 40 C.F.R. § 122.22, of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision as the responsible company official in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

This certification requirement does not apply upon proof acceptable to EPA and the State to emergency or similar notifications where compliance would be impractical.

23. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

24. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### IX. STIPULATED PENALTIES

25. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

26. Effluent Limits. The following Stipulated Penalties shall accrue per violation per day for each violation of any (applicable) requirement of Defendant's NPDES permit:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
Daily Effluent Limit	\$200
7-Day Average Limit	\$300
30-Day Average Limit	\$400

27. Monitoring and Record Keeping Milestones

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Subparagraph b:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$400
31-60 days	\$750
61 or more days	\$1,350

b. Monitoring and record keeping milestones subject to Stipulated Penalties under the provisions of Subparagraph a include IU Effluent / Facility Influent Monitoring pursuant to Subparagraph 17a, Pre-discharge Monitoring pursuant to Subparagraph 17b, Discharge Monitoring pursuant to Subparagraph 17c, and In-stream Monitoring pursuant to Subparagraph 17d.

28. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VIII of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$400
31-60 days	\$750
61 or more days	\$1,350

29. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for each individual

violation of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

30. Stipulated Penalties shall continue to accrue as provided in Paragraph 29, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen days of receiving the final appellate court decision.

31. Defendant shall pay Stipulated Penalties for violations of EPA NPDES Permit No. IA0037036 occurring between the date of lodging and the Effective Date of this Consent Decree within 30 days of the Effective Date of this Consent Decree.

32. Defendant shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 9, above or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-08078, and delivered to the office of the United States Attorney, Northern District of Iowa, P.O. Box 74950, 401 First Street SE, Suite 400, Cedar Rapids, IA 52407-4950.

33. Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

34. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

35. Subject to the provisions of Section XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

Where a violation of this Consent Decree is also a violation of Sections 301, 307 or 402 of the Act, 33 .S.C. §§ 1311, 1317 or 1342, or regulations promulgated thereunder, Defendant shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.



## X. FORCE MAJEURE

36. A "force majeure event" is any event beyond the control of Defendant, its contractors and consultants, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "force majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree or failure of Defendant to approve contracts, shall not, in any event, be considered "force majeure" events. However, if a permitting authority fails to issue, renew or modify--or delays in issuing, renewing or modifying--a lawful permit, order or other action required for any part of the work under this Consent Decree, Defendant is entitled to seek relief under the "force majeure" provisions of this Consent Decree.

37. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XVI

of this Consent Decree (Notices), within seven days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

38. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVIII of this Consent Decree (Modification).

39. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section XI of this Consent Decree. In any such dispute, the provisions of Section XI (Dispute Resolution) shall apply and Defendant bears the burden of proving that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 37; that the force majeure event caused any delay Defendant

claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

#### XI. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

41. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

42. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in

dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

43. The United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

44. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

45. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

46. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that actions or positions taken are in accordance with and will assure Defendant's compliance with the terms, conditions, requirements and objectives of this Consent Decree and the CWA. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

47. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 30, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. INFORMATION COLLECTION AND RETENTION**

48. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility

covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representative, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

49. Upon request, Defendant shall provide EPA and the State or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and the State shall provide Defendant splits of any samples taken by EPA or the State.

50. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record

retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or the State may request copies of any documents or records required to be maintained under this Paragraph.

51. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least 90 days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States or the State, Defendant shall deliver any such records or documents to EPA or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

52. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State

pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

### XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

53. Subject to Paragraph 64 below, this Consent Decree resolves the civil claims for the violations alleged in the Complaint filed by the United States and the State in this action and the civil claims for the violations alleged in the Complaint filed by NICCW in this action through the date of lodging.

54. This Consent Decree shall not be construed to prevent or limit the rights of the United States, the State or NICCW to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 53 above.

55. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C.

§ 1251, *et seq.*



56. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State or NICCW against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

57. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

58. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

#### XIV. NATURAL RESOURCE DAMAGES CLAIMS

59. Compensatory Restoration Damages and Past Assessment Costs.

Within thirty days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$39,000 to the Natural Resource Damage Assessment and Restoration Fund ("NRDAR Fund") for restoration project(s) to compensate the public for lost ecological services claimed as a result of injured natural resources in the Yellow River area due to the March 2000 Discharge Event and for past assessment costs in connection with the March 2000 Discharge Event. The U.S. Department of the Interior, Fish & Wildlife Service and the National Park Service, in conjunction with the State of

Iowa, will use the restoration project funds, totaling \$37,500, to restore, replace, or acquire the equivalent of resources and/or their services claimed injured by the March 2000 Discharge Event. The remaining \$1,500, representing past assessment costs, will be used for reimbursement of the costs associated with assessing the March 2000 Discharge Event.

60. State Past Assessment and Valuation Costs. Within thirty days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$1,000 to the State of Iowa Fish & Game Protection Fund, to reimburse the State for the assessed valuation of the aquatic life kill and for assessment costs in connection with the March 2000 Discharge Event.

61. The NRDAR Fund payment under this section shall be made via electronic funds transfer in accordance with instructions to be provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Iowa within 15 days following lodging of the Consent Decree. Any payments received by the United States after 4:00 p.m. Eastern Time shall be credited on the next business day. Such monies are to be deposited in the NRDAR Fund, referencing account number 14X5198 (NRDAR), the Site name, the location of the Site, and the paying party. Copies of the electronic funds transfer and transmittal letter, which shall reference the Department of Justice case number 90-5-1-1-08078, shall simultaneously be mailed, via first class mail to:

Department of the Interior  
Natural Resource Damage Assessment and Restoration Program  
Attn: Restoration Fund Manager  
1849 C Street, NW  
Mailstop 4449  
Washington, DC 20240

and to the United States, the U.S. Department of the Interior and the State in  
accordance with Section XVI of this Consent Decree (Notices).

The check to the State of Iowa Fish & Game Protection Fund should be mailed to:

David R. Sheridan  
Assistant Attorney General  
Environmental Law Division  
Iowa Department of Justice  
Lucas State Office Bldg.  
321 E. 12<sup>th</sup> Street, Room 018  
Des Moines, Iowa 50319

62. If Defendant fails to pay the sums required to be paid to the United States under this section when due, interest shall accrue on any amounts overdue to the U.S. under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. §1961. Interest is to be paid from the date said payment is due until all amounts owed are paid. Late payment shall be made in accordance with Paragraph 61 above. Stipulated Penalties shall be paid in accordance with Section IX, Paragraph 32. All transmittal correspondence shall state that any such payment is for late payment of the sums due for Natural Resource Damages under this Consent Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 61 above.

63. Covenant Not to Sue. Except as specifically provided in Paragraph 64 below, the United States and the State covenant not to sue the Defendant for Natural Resource Damages, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f); and PSRPA, 16 U.S.C. § 19jj, as a result of injuries caused by the March 2000 Discharge Event. This covenant not to sue shall take effect upon receipt of the Defendant's payment pursuant to Paragraph 61 of this Consent Decree. This covenant not to sue extends only to the Defendant and does not extend to any other person.

64. Reservation of Rights. Notwithstanding any other provisions of this Consent Decree, the United States and the State reserve the right to institute proceedings against the Defendant in this action or in a new action seeking recovery of Natural Resource Damages resulting from the March 2000 Discharge Event, based on (1) conditions with respect to the Site, unknown to the United States and the State as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources ("Unknown Conditions"); or (2) information received by the United States and the State after the date of lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown to the United States and the State as of the date of lodging of this Decree ("New Information"). For purposes of this Paragraph only, an increase solely in the United States' or State's

assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources at the Site shall not be considered Unknown Conditions or New Information.

#### XV. COSTS

65. Except as provided in Section V (Costs and Attorneys Fees for NICCW), the Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

#### XVI. NOTICES

66. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-08078

and

Robert M. Butler  
United States Attorney's Office  
P.O. Box 74950  
Cedar Rapids, IA 52407-4950

To EPA:

Paul T. Marshall, P.E.  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Patricia Gillispie Miller  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

To the U.S. Department of Interior

Richard C. Nelson  
Field Supervisor  
U.S. Fish & Wildlife Service  
Rock Island Field Office  
4469 48<sup>th</sup> Ave. Ct.  
Rock Island, IL 61202

To the State:

Iowa Department of Natural Resources  
Field Office #1  
909 W. Main Street, Suite 4  
Manchester, Iowa 50319

and

David R. Sheridan  
Assistant Attorney General  
Environmental Law Division  
Iowa Department of Justice  
Lucas State Office Bldg.  
321 E. 12<sup>th</sup> Street, Room 018  
Des Moines, Iowa 50319

To NICCW:

Jerry L. Anderson  
Midwest Environmental Justice Advocates  
610 East Salem Ave.  
Indianola, Iowa 50125

To Defendant:

Gary Simmons, Sr.  
Public Works Director  
415 Oak Drive  
P.O. Box 242  
Postville, IA 52162-0242

67. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

68. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XVII. EFFECTIVE DATE**

69. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

**XVIII. RETENTION OF JURISDICTION**

70. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections XI and XIX, or effectuating or enforcing compliance with the terms of this Consent Decree.

#### **XIX. MODIFICATION**

71. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

#### **XX. TERMINATION**

72. After Defendant has maintained continuous satisfactory compliance with the requirements of the Act, its permit, and this Consent Decree for a period of 36 months after the Effective Date of this Consent Decree, or if prior to that time, the Defendant's EPA NPDES Permit Number IA0037036 is terminated or revoked and not reissued, and provided that Defendant has paid the civil penalties, funds for Natural Resource Damages, attorneys fees and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

73. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Consent Decree may be



terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

74. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI of this Consent Decree. However, Defendant shall not seek Dispute Resolution of any dispute, under Paragraph 42 of Section XI, until 10 days after service of its Request for Termination.

#### **XXI. PUBLIC PARTICIPATION**

75. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

#### **XXII. SIGNATORIES/SERVICE**

76. Each signatory to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

77. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

78. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

79. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

### XXIII. INTEGRATION

80. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXIV. FINAL JUDGMENT

81. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, the NICCW, and Defendant.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
Northern District of Iowa

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 10/13/04

\_\_\_\_\_  
CATHERINE R. MCCABE  
Deputy Section Chief  
Environmental and Natural Resources Division  
Environmental Enforcement Section  
United States Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044

Date: 10/13/04

(\_\_\_\_\_  
ARNOLD S. ROSENTHAL  
Senior Counsel  
Environmental Enforcement Section  
Environmental and Natural Resources Division  
United States Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044

FOR PLAINTIFF UNITED STATES OF AMERICA:

CHARLES W. LARSON, SR.  
United States Attorney  
Northern District of Iowa

By:

Date: 14 Oct 2004

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ROBERT M. BUTLER  
Assistant United States Attorney  
Northern District of Iowa  
P.O. Box 74950  
Cedar Rapids, IA 52407-4950

FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7:

Date: 10/13/04

JAMES B. GULLIFORD  
Regional Administrator  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Date: 10/13/04

PATRICIA GILLISPIE MILLER  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: Oct 13, 2004

*Mark Collins for*

\_\_\_\_\_  
THOMAS V. SKINNER  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Date: 14 Oct 2004

*For*

\_\_\_\_\_  
LAURIE DUBRIEL  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

FOR PLAINTIFF THE U.S. DEPARTMENT OF THE INTERIOR:

ROBYN THORSON  
Regional Director  
Great Lakes-Big Rivers Region  
U.S. Fish & Wildlife Service



FOR PLAINTIFF STATE OF IOWA:

THOMAS J. MILLER  
Attorney General of Iowa

Date: 10/11/04

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DAVID R. SHERIDAN  
Assistant Attorney General  
Environmental Law Division  
Iowa Department of Justice  
Lucas State Office Bldg.  
321 E. 12<sup>th</sup> Street, Room 018  
Des Moines, Iowa 50319

FOR PLAINTIFF NORTHEAST IOWA CITIZENS FOR CLEAN WATER:

Date: 10/12/04

JERRY L. ANDERSON  
Midwest Environmental Justice Advocates  
610 East Salem Ave.  
Indianola, Iowa 50125  
Telephone: (515) 271-2658

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FOR DEFENDANT THE CITY OF POSTVILLE, IOWA:

Date: 02 11, 2004

JOHN R. HYMAN  
Mayor  
City of Postville  
204 E. Military Road  
Postville, IA 52162

Agent Authorized to Accept Service on Behalf of the City of Postville, Iowa, Relating to this Consent Decree:

Name: Steven J. Pace  
Address: Shuttleworth & Ingersoll PLC  
115 Third Street SE  
Suite 500  
P.O. Box 2107  
Cedar Rapids, IA 52406-2107

Phone Number: .....

Email: \_\_\_\_\_

## ATTACHMENT 1

### CONSOLIDATED CONSENT DECREE BETWEEN UNITED STATES OF AMERICA, STATE OF IOWA, NORTHEAST IOWA CITIZENS FOR CLEAN WATER AND CITY OF POSTVILLE, IOWA

#### In-Stream Sampling Requirements for Compliance with IDNR Administrative Order No. 2000-WW-38

**Table A. Acute Ammonia Criteria at Yellow River Smith Road Bridge**

pH SU	7.5	7.6	7.7	7.8	7.9	8.0	8.1	8.2	8.3	8.4	8.5	8.6	8.7	8.8	8.9	9.0
NH3 mg/l	13.3	11.4	9.64	8.11	6.77	5.62	4.64	3.83	3.15	2.59	2.14	1.77	1.47	1.23	1.23	1.04

The values listed above are taken from 567 IAC Chapter 61 Table 3a. These values are acute criterion for Class B(CW) streams.

**Table B. Monitoring to be conducted in Yellow River**

Wastewater Parameter	Sample Frequency (minimum)	Sample Type	Monitoring Location
NH3	2/Week	Field	Smith Road Bridge * – Yellow River
pH	2/Week	Field	Smith Road Bridge * – Yellow River
NH3	1/Week	Lab	Smith Road Bridge * – Yellow River

\* Smith Road Bridge refers to the bridge that crosses the Yellow River on Smith Road (T-96-N, R-6-W, NE ¼ NE ¼ Section 16)

Ammonia concentration listed in Table A. can not be exceeded at any time at the site identified in Table B.

Field tests for ammonia and pH may be done using a hand kit of the type currently utilized by the City of Postville, if the following conditions are met:

For pH: The pH function should measure to tenths of a pH standard unit and should be calibrated before each use by at least two points of calibration in the expected range of actual measurement. The pH function should be checked for working accuracy using a buffer at the opposite end of the instrument scale. A record shall be kept of all calibrations, including date, analyst and actual reading for each specific buffer.

For ammonia (NH3): The ammonia function should measure to the hundredth of a milligram and the accuracy of the function shall be validated before each use by measurement of standards that bracket the range of regulated values. Suggested values might be ammonia standards of 1 mg/l and 20 mg/l. A record of ammonia meter performance shall be kept of all calibrations, including the date, analyst and actual values read for each specific buffer. One of the two weekly field samples for ammonia shall be used as a split sample for the weekly lab analysis for ammonia.

No field measurement for pH or ammonia will be considered valid if the meter reading is not within two tenths of the standards (buffers) used for calibration.